

ORIGINAL

OPEN MEETING



0000133708

MEMORANDUM

Arizona Corporation Commission

DOCKETED

RECEIVED

TO: THE COMMISSION

JAN 27 2012

2012 JAN 27 P 2:15

FROM: Utilities Division

DATE: January 27, 2012

DOCKETED BY

[Signature]

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

RE: LEVEL 3 COMMUNICATIONS, LLC, GLOBAL CROSSING TELECOMMUNICATIONS, INC., GLOBAL CROSSING LOCAL SERVICES, INC., BROADWING COMMUNICATIONS, LLC AND WILLIAMS COMMUNICATIONS, LLC DBA WILTEL COMMUNICATIONS, LLC - APPLICATION FOR APPROVAL OF A LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTEREST RULES (A.A.C. R14-2-801 ET SEQ.) OR, IN THE ALTERNATIVE, APPROVAL OF GUARANTEE UNDER A.A.C. R14-2-804; AND FOR AUTHORIZATION TO ENCUMBER AND/OR MORTGAGE THEIR ASSETS (DOCKET NOS. T-03654A-11-0440, T-02438B-11-0440, T-03658A-11-0440, T-04176A-11-0440 AND T-03708A-11-0440)

Introduction

On December 7, 2011, Level 3 Communications, LLC ("Level 3 LLC") filed an application with the Arizona Corporation Commission ("Commission") to request a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, Arizona Administrative Code ("A.A.C." R14-2-801 to R14-2-806 referred to as the "Affiliated Interests Rules"), in connection with certain financing arrangements by Level 3 LLC's affiliate Level 3 Financing, Inc. ("Level 3 Financing") under which Level 3 LLC will provide a guarantee. In the alternative, Level 3 LLC requests, to the extent necessary, approval under A.A.C. R14-2-804 for Level 3 LLC to provide the guarantee for the new financing arrangements of Level 3 Financing.

Additionally, Level 3 LLC, Broadwing Communications, LLC ("Broadwing"), WilTel Communications, LLC ("WilTel"), Global Crossing Telecommunications, Inc. ("GC Telecommunications") and Global Crossing Local Services ("GC Local") (with Level 3 LLC, the "Applicants") request an order from the Commission under Arizona Revised Statutes ("A.R.S.") § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of the utility plant and assets of the Applicants in connection with the Applicants participation in certain new financing arrangements of Level 3 Financing.

At a procedural conference held January 5, 2012, the Applicants waived the 30 day requirement under A.A.C. R14-2-806.

Background of Applicants

Level 3 Communications, Inc. ("Level 3") is a publicly-traded (NYSE: LVLT) Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. The Applicants are wholly-owned subsidiaries of Level 3 and are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis.

In Arizona, Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a certificate of convenience and necessity ("CCN") granted in Decision No. 61737 (June 4, 1999). Broadwing is authorized to provide resold and facilities-based local exchange and interexchange service pursuant to a CCN granted in Decision No. 66105 (July 25, 2003). WilTel is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to a CCN granted in Decision No. 62025 (November 2, 1999). GC Telecommunications is authorized to provide interexchange telecommunications services pursuant to its CCN granted by Decision No. 54505 (April 29, 1985), as expanded by Decision No. 60501 (November 25, 1997). GC Local is authorized to provide facilities-based local exchange telecommunications services pursuant to its CCN granted by Decision No. 61622 (April 1, 1999).

The Applicants' Transaction

The Applicants in their application represent the following:

Level 3 Financing has entered into a \$550 million term loan with a maturity of up to seven (7) years. Level 3 Financing has lent the net proceeds it received to its subsidiary, Level 3 LLC, in return for an intercompany demand note. The Applicants will pledge their assets and act as guarantors in support of the \$550 million Term Loan.

The Applicants emphasize that their participation in the financing as guarantors will not result in a change in their ownership or in their day-to-day operations. The proceeds from the Term Loan will be used for working capital and for other permissible general corporate purposes. The Applicants expect the financing to further enable the Applicants to bring services to new markets and allow more consumers to benefit from their competitive services.

Staff's Analysis and Conclusions

Staff's review of the Applicants' 2010 Annual Reports, filed with the Commission on April 15, 2011, indicates that the Level 3 LLC, WilTel and GC Telecommunications are Class A utilities subject to the Commission's Public Utility Holding Companies and Affiliated Interests Rules. Broadwing and GC Local are not Class A utilities based on their 2010 Annual Reports.

A.A.C. R14-2-804 requires that a utility will not consummate certain financial transactions without prior approval of the Commission.¹ The rule serves to determine if transactions would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service. Based on its evaluation of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Applicants, would not impair their ability to attract capital, nor would it impair the ability of the Applicants to provide safe, reasonable, and adequate service.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. A pledge of the Applicants' Arizona assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Any authorization for encumbrance should provide customer protection for prepayments and deposits. Level 3 LLC has stated to Staff that the proposed financing will specifically exclude Arizona customer deposits, advances and prepaid funds. Therefore, to the extent that Level 3 LLC holds any Arizona customer deposits or prepayments, those funds should not be pledged as part of the transaction.

On December 22, 2011, the Applicants filed with the Commission's Docket Control an affidavit of publication verifying public notice of its proposed transaction. The Company published notice of its application in *The Arizona Republic* on December 16, 2011.

Staff's Recommendations

Staff recommends that the application filed by Level 3 LLC, Broadwing, WilTel, GC Telecommunications and GC Local seeking approval of certain financing arrangements with approval to guarantee such financing arrangements and authorization to encumber their assets in support of such financing arrangements be approved with the following conditions:

1. That all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

¹ Commission Review of Transactions Between Public Utilities and Affiliates

2. That one copy of executed loan documents be filed by the Applicants with the Director of the Utilities Division ("Director") and a letter be filed in Docket Control confirming the filing of the executed loan documents with the Director, as a compliance item in this docket, within 30 days following execution of such documents.



for Steven M. Olea
Director
Utilities Division

SMO:AFF:lhmr\RM

ORIGINATOR: Armando F. Fimbres

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE JOINT
APPLICATION OF LEVEL 3
COMMUNICATIONS, LLC, GLOBAL
CROSSING TELECOMMUNICATIONS,
INC., GLOBAL CROSSING LOCAL
SERVICES, INC., BROADWING
COMMUNICATIONS, LLC AND
WILLIAMS COMMUNICATIONS, LLC
DBA WILTEL COMMUNICATIONS, LLC
FOR APPROVAL OF A LIMITED WAIVER
OF THE PUBLIC UTILITY HOLDING
COMPANIES AND AFFILIATED
INTEREST RULES (A.A.C. R14-2-801 ET
SEQ.) OR, IN THE ALTERNATIVE,
APPROVAL OF GUARANTEE UNDER
A.A.C. R14-2-804; AND FOR
AUTHORIZATION TO ENCUMBER
AND/OR MORTGAGE THEIR ASSETS

DOCKET NOS. T-03654A-11-0440
T-02438B-11-0440
T-03658A-11-0440
T-04176A-11-0440
T-03708A-11-0440

DECISION NO. _____

ORDER

Open Meeting
February 14 and 15, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On December 7, 2011, Level 3 Communications, LLC (“Level 3 LLC”) filed an application with the Arizona Corporation Commission (“Commission”) to request a limited waiver of the Commission’s Public Utility Holding Companies and Affiliated Interests Rules, Arizona Administrative Code (“A.A.C.” R14-2-801 to R14-2-806 referred to as the “Affiliated Interests ...

Rules”), in connection with certain financing arrangements by Level 3 LLC’s affiliate Level 3 Financing, Inc. (“Level 3 Financing”) under which Level 3 LLC will provide a guarantee.

2. In the alternative, Level 3 LLC requests, to the extent necessary, approval under A.A.C. R14-2-804 for Level 3 LLC to provide the guarantee for the new financing arrangements of Level 3 Financing.

3. Additionally, Level 3 LLC, Broadwing Communications, LLC (“Broadwing”), WilTel Communications, LLC (“WilTel”), Global Crossing Telecommunications, Inc. (“GC Telecommunications”) and Global Crossing Local Services (“GC Local”) (with Level 3 LLC, the “Applicants”) request an order from the Commission under Arizona Revised Statutes (“A.R.S.”) § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of the utility plant and assets of the Applicants in connection with the Applicants participation in certain new financing arrangements of Level 3 Financing.

4. At a procedural conference held January 5, 2012, the Applicants waived the 30 day requirement under A.A.C. R14-2-806.

Background

5. Level 3 Communications, Inc. (“Level 3”) is a publicly-traded (NYSE: LVL) Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. The Applicants are wholly-owned subsidiaries of Level 3 and are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis.

6. In Arizona, Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a certificate of convenience and necessity (“CCN”) granted in Decision No. 61737 (June 4, 1999).

7. Broadwing is authorized to provide resold and facilities-based local exchange and interexchange service pursuant to a CCN granted in Decision No. 66105 (July 25, 2003).

8. WilTel is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to a CCN granted in Decision No. 62025 (November 2, 1999).

1 9. GC Telecommunications is authorized to provide interexchange
2 telecommunications services pursuant to its CCN granted by Decision No. 54505 (April 29, 1985),
3 as expanded by Decision No. 60501 (November 25, 1997).

4 10. GC Local is authorized to provide facilities-based local exchange
5 telecommunications services pursuant to its CCN granted by Decision No. 61622 (April 1, 1999).

6 The Applicants' Transaction

7 The Applicants in their application represent the following:

8 11. Level 3 Financing has entered into a \$550 million term loan with a maturity of up to
9 seven (7) years. Level 3 Financing has lent the net proceeds it received to its subsidiary, Level 3
10 LLC, in return for an intercompany demand note. The Applicants will pledge their assets and act
11 as guarantors in support of the \$550 million Term Loan.

12 12. The Applicants emphasize that their participation in the financing as guarantors will
13 not result in a change in their ownership or in their day-to-day operations. The proceeds from the
14 Term Loan will be used for working capital and for other permissible general corporate purposes.
15 The Applicants expect the financing to further enable the Applicants to bring services to new
16 markets and allow more consumers to benefit from their competitive services.

17 Staff's Analysis and Conclusions

18 13. Staff's review of the Applicants' 2010 Annual Reports, filed with the Commission
19 on April 15, 2011, indicates that the Level 3 LLC, WilTel and GC Telecommunications are Class
20 A utilities subject to the Commission's Public Utility Holding Companies and Affiliated Interests
21 Rules. Broadwing and GC Local are not Class A utilities based on their 2010 Annual Reports.

22 14. A.A.C. R14-2-804 requires that a utility will not consummate certain financial
23 transactions without prior approval of the Commission.¹ The rule serves to determine if
24 transactions would impair the financial status of the public utility, otherwise prevent it from
25 attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide
26 safe, reasonable and adequate service. Based on its evaluation of the proposed transaction, Staff

27
28 ¹ Commission Review of Transactions Between Public Utilities and Affiliates

1 concludes that the transaction would not impair the financial status of the Applicants, would not
2 impair their ability to attract capital, nor would it impair the ability of the Applicants to provide
3 safe, reasonable, and adequate service.

4 15. A.R.S. § 40-285 requires public service corporations to obtain Commission
5 authorization to encumber certain utility assets. The statute serves to protect captive customers
6 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
7 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
8 service. A pledge of the Applicants' Arizona assets should not impair the availability of service to
9 customers since the Applicants provide competitive services that are available from alternative
10 service providers. Customers may still have exposure to losses to the extent they have prepaid for
11 service or made deposits. Any authorization for encumbrance should provide customer protection
12 for prepayments and deposits. Level 3 LLC has stated to Staff that the proposed financing will
13 specifically exclude Arizona customer deposits, advances and prepaid funds. Therefore, to the
14 extent that Level 3 LLC holds any Arizona customer deposits or prepayments, those funds should
15 not be pledged as part of the transaction.

16 16. On December 22, 2011, the Applicants filed with the Commission's Docket Control
17 an affidavit of publication verifying public notice of its proposed transaction. The Company
18 published notice of its application in *The Arizona Republic* on December 16, 2011.

19 17. Staff recommends that the application filed by Level 3 LLC, Broadwing, WilTel,
20 GC Telecommunications and GC Local seeking approval of certain financing arrangements with
21 approval to guarantee such financing arrangements and authorization to encumber their assets in
22 support of such financing arrangements be approved with the that all customer deposits and
23 prepayments be excluded from encumbrance and equivalent amounts be retained by the
24 Applicants. Staff further recommends that one copy of executed loan documents be filed by the
25 Applicants with the Director of the Utilities Division ("Director") and a letter be filed in Docket
26 Control confirming the filing of the executed loan documents with the Director, as a compliance
27 item in this docket, within 30 days following execution of such documents.

28 ...

CONCLUSIONS OF LAW

1
2 1. Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel
3 Communications, LLC, Global Crossing Telecommunications, Inc. and Global Crossing Local
4 Services, Inc. are public service corporations within the meaning of Article XV of the Arizona
5 Constitution.

6 2. The Commission has jurisdiction over Level 3 Communications, LLC, Broadwing
7 Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc.
8 and Global Crossing Local Services, Inc. and the subject matter in this filing.

9 3. The Commission, having reviewed the filing and Staff's Memorandum dated
10 January 27, 2012, concludes that it is in the public interest to grant approval as proposed and
11 discussed herein.

ORDER

12
13 IT IS THEREFORE ORDERED that the application of Level 3 Communications,
14 LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc.,
15 Broadwing Communications, LLC and Williams Communications, LLC dba WilTel
16 Communications, LLC seeking approval of the proposed transactions pursuant to A.A.C. R14-2-
17 804 and A.R.S. § 40-285 be and hereby is approved, as discussed herein.

18 IT IS FURTHER ORDERED that Level 3 Communications, LLC, Global Crossing
19 Telecommunications, Inc., Global Crossing Local Services, Inc., Broadwing Communications,
20 LLC and Williams Communications, LLC dba WilTel Communications, LLC be authorized to
21 engage in any transactions and to execute any documents necessary to effectuate the authorizations
22 granted.

23 IT IS FURTHER ORDERED that the application of Level 3 Communications, LLC,
24 Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., Broadwing
25 Communications, LLC and Williams Communications, LLC dba WilTel Communications, LLC is
26 subject to the condition that all customer deposits and prepayments be excluded from this
27 transaction.

28 ...

1 IT IS FURTHER ORDERED that copies of executed loan documents be filed by Level 3
2 Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local
3 Services, Inc., Broadwing Communications, LLC and Williams Communications, LLC dba WiTel
4 Communications, LLC with the Director of the Utilities Division ("Director") and a letter be filed
5 in Docket Control confirming the filing of the executed loan documents with the Director, as a
6 compliance item in this docket, within 30 days following execution of such documents.

7 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

8
9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

10
11 _____
12 CHAIRMAN

COMMISSIONER

13
14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15
16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto, set my hand and caused the official seal of this
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this _____ day of _____, 2012.

21 _____
22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24 DISSENT: _____

25 DISSENT: _____

26 SMO:AFF:lh\RM
27
28

Decision No. _____

SERVICE LIST FOR: Level 3 Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., Broadwing Communications, LLC, WilTel Communications, LLC
DOCKET NOS. T-03654A-11-0440, T-02438B-11-0440, T-03658A-11-0440, T-04176A-11-0440 and T-03708A-11-0440

Mr. Michael W. Patten
Mr. Timothy J. Sabo
Roshka DeWulf & Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Ms. Catherine Wang
Ms. Danielle C. Burt
Mr. Jeffrey Strenkowski
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006

Mr. Richard E. Thayer
Senior Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice M. Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007